IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 450 of 1989

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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KAMUBEN MALABHAI WD/O DHANJI JIVABHAI THRO'HEIRS GANGABEN J & 5 - Appellant(s)

Versus

DEVJIBHAI NAJABHAI & 1 - Defendant(s)

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Appearance :

MR RJ OZA for Appellant(s) : 1 - 6.
MR NAGIN N GANDHI for Defendant(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 03/08/2006

ORAL JUDGMENT

1.0 By way of this appeal, the appellants have challenged the judgment and award of the learned Commissioner, under Workmen's Compensation Act, Bhavnagar (for short, 'the Authority')passed in W.C.C. No. 93 of 1983 dated 25th November, 1987 whereby the Authority dismissed the said application.

2.0 The brief facts of the case are that

deceased-Danjibhai was working with the opponent and he expired during the course of his employment. Therefore, present appellants being heirs and legal representative of the deceased send a notice to the opponent claiming compensation. Since, the opponent did not take any action, they filed an application claiming an amount of Rs.35,000/- by way of compensation.

2.1 In the said application, after hearing the parties, the Authority passed the judgment and award which is under challenge in this appeal.

3.0 Heard, learned Counsel for the parties. The case of the appellants before the Tribunal was that on 23.01.1982 while the deceased was on his duty, he was hit by a scissor thrown by one Dinesh and on account of that injury he later on expired. The story put forward by the appellants is supported by deposition of one Amraben Devshibhai (Exh.45). However, in the present

case neither the doctor was examined nor the extent of injury sustained by the deceased is on record. The only evidence, in this case, is that the deceased died after 15 days after receiving injury on his forehead. In the judgment of the Criminal Case No.503 of 1982 (Exh.32) also, there is no mention of any medical evidence. It may be noted that one Dinesh who was alleged to have thrown the scissor was acquitted by the Court. Hence, in the absence of any medical or other documentary evidence, the Tribunal has justified in holding that the appellants are not entitled for any compensation.

3.1 As regards the contention of the learned Advocate for the appellants that the principle laid down by this Court in the case of ***"Oriental, Fire & General Insurance Co. Ltd. Vs. Sunderbai Ramji and Another"*** reported in 1992 ACJ 907 shall apply in this case is concerned, the same requires to be rejected. In view of the fact that in that case it was proved that the deceased

sustained injury during the course of his employment, whereas in the present case, the appellants have failed to prove that the deceased received injuries in an accident arising out of and during the course of his employment with the opponent. I am, therefore, in complete agreement with the reasonings given and findings arrived at by the Tribunal, and hence, find no reason to interfere in this appeal deserves to be dismissed.

4.0 In the result, the appeal stands dismissed. No order as to costs.

(K.S. Jhaveri,J.)

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